



**MINUTES OF THE CITY COUNCIL MEETING  
OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, April 8, 2003, 8:00 p.m.**

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**MEETING**

The Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Dowling.

**ROLL CALL**

Present: COUNCIL MEMBERS Jimenez, Hilson,  
Rodriguez, Ward, Dowling, Henson  
MAYOR Cooper  
Absent: None

**PRESENTATION:** Pride in Hayward Award

Mayor Cooper presented the Pride in Hayward Award to the following residents in the Tennyson/Alquire Neighborhood: Ramon & Aida Delmundo; David & Nancy Lowerre; Dingkuo & Linan Huang; Evelio and Elvira Llamas; Wilson & Catherine Basa. She thanked them for taking such pride in their homes and in the City of Hayward.

**Volunteer Awards Presentations**

Mayor Cooper commended and appreciated all the volunteers on behalf of the City Council in celebration of National Volunteer Week. She indicated how their efforts help make a difference for the City of Hayward. She thanked them all for their gift of time and talents.

**PUBLIC COMMENTS**

Barbara Swarr commented on the forthcoming chain restaurant coming into Hayward and the vacancies in the city-owned building on B Street.

Jason Moreno spoke on the need to repair Highland Boulevard.

**CONSENT**

1. Approval of Minutes of the City Council Meeting of April 1, 2003

It was moved by Council Member Hilson, seconded by Council Member Rodriguez, and unanimously carried to approve the minutes of the City Council Meeting of April 1, 2003.

**DRAFT**

2. Authorization to Execute a Professional Services Agreement for a Project Study Report on the Route 238 Corridor Improvement Project and Appropriation of Funds

Staff report submitted by Deputy Director of Public Works/Engineering Bauman, dated April 8, 2003, was filed.

It was moved by Council Member Hilson, seconded by Council Member Rodriguez, and unanimously carried to adopt the following:

Resolution 03-043, "Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Mark Thomas & Company for the Route 238 Corridor Improvement Project, Project No. 5119"

Resolution 03-044, "Resolution Amending Resolution 02-087, as Amended, the Budget Resolution for Fiscal Year 2002-03, Relating to an Appropriation of Funds from the Route 238 Corridor Improvement Project, Project No. 5119"

## **HEARINGS**

3. Revisions to the Park Dedication In-Lieu Fees

Staff report submitted by Landscape Architect Carranza, dated April 8, 2003, was filed.

CED Director Ehrenthal described the proposal. She noted that the revision was based on the new strategies in the General Plan. She stated that a survey of fees from surrounding cities exceeded the City of Hayward's fees by several times the City of Hayward amount. The proposed revisions in the ordinance would be phased in over a period of three years with an annual adjustment so the fees do not fall behind again. The proposal was brought before the HARD Board in 2002, which resulted in a recommendation of support, as did the Local Agencies Committee in February of 2003. She responded to Council questions.

Council Member Henson commented on the preferred dedication of land rather than in-lieu fees and asked how HARD applies for funds to develop park sites in the City of Hayward.

CED Director Ehrenthal explained that HARD applies to the City in writing and Council approves their application. The funds are kept in a trust account by zones within the City. All of these funds remain in Hayward. The facilities fee would make it possible to significantly improve the types of facilities within the City of Hayward. She noted that development plans approved to date would not be encumbered by this action.



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City Manager Armas noted that the fees are in effect when the ordinance becomes effective, i.e., 30 days after adoption.

Council Member Ward asked whether tennis courts and urban-type parks would be allowed as eligible facilities.

CED Director Ehrenthal agreed that, for example, tennis courts on the top of parking facilities would be eligible for park dedication fees.

Council Member Hilson stated that the City of Hayward seems to be behind on park fees right now, and phasing in the program might lose needed funding for both the Park District and the City. He also discussed the value of land in the City.

Council Member Jimenez stated that since HARD has excellent programs and that he wished the Council could double the fees for them at this time. He asked about Blue Rock and their fees.

CED Director Ehrenthal stated that the Development Agreement with Blue Rock is for them to provide certain parklands with soccer fields and expanded parks and improvements. The recreation effort is greater than the prospective fees from this ordinance.

Council Member Rodriquez commented on infill developments, as well as the fee structure.

CED Director Ehrenthal stated that developers of fewer than 50-units can be required to pay fees, which can be used for improving existing parkland.

Council Member Ward discussed the conversions of other possibilities rather than just apartments to condominiums. He suggested that anything that creates a new residential unit should be included as well.

Mayor Cooper opened the public hearing at 8:50 p.m.

In response to Council Member Henson's request, Eric Willyerd, HARD, provided some background on the loss of funds throughout the past few years. He noted the loss of \$40 million recently from State decisions and takeaways.

Mayor Cooper closed the public hearing at 8:57 p.m.

Council Member Hilson asked about a friendly amendment to Council Member Ward's motion for a staff recommendation, with the exception to enact the fee immediately, without phasing it in over time. He then moved a substitute motion, seconded by Council Member Rodriquez.

**DRAFT**

City Attorney O'Toole clarified that the substitute motion included the information in the original motion to support the staff recommendation. Council could then only vote once, if the substitute motion passed.

Council Member Dowling supported the substitute motion. It is a one-time fee. Waiting for a three-year phase in, as the City is being built out, that is money that will never be recovered.

Council Member Rodriquez said she, too, would support the substitute motion for similar reasons.

Council Member Henson asked what the rationale for a phase-in of three years rather than two years.

CED Director Ehrental said suddenly doubling and tripling a fee might make an area seem non-competitive.

City Manager Armas noted the upcoming increase in fees for water and utilities. He said the decision to phase in the increase was a balance between the magnitude and the accumulative effect.

Mayor Cooper added that though this request came to the Council from HARD, the Council could act as it wishes. She stated that since everyone in the City will be paying the increase in fees for water and utilities that should not be a major factor in making the decision.

Council Member Ward asked about reactions of those who might be paying the fees, and their potential impact.

City Manager Armas said there was not enough response to typify. Although many of those who did respond, would like to maintain the lower fees, as well as planning for a longer period of time with regard to the phase-in.

Council Member Ward said the balance is appropriate and he would not support the fee being increased all at one time.

It was moved by Council Member Hilson, seconded by Council Member Rodriquez, and carried by the following roll call vote to support the resolution and introduce the ordinance:

AYES:	Council Members Jimenez, Hilson, Rodriquez, Dowling, MAYOR Cooper
NOES:	Council Member Ward, Henson
ABSENT:	None
ABSTAINED:	None



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Resolution 03-045, "Resolution Finding that the Revisions to the Park-in-Lieu Fees Ordinance is Exempt from Review Under the California Environmental Quality Act"

Introduce Ordinance 03-\_\_, "Ordinance Revising Article 16 of Chapter 10 of the Hayward Municipal Code for the Park Dedication In-Lieu Fees"

**LEGISLATIVE BUSINESS**

4. Authorization to Forward Letter of Public Convenience and Necessity to the State Regarding Proposed La Salsa Restaurant

Staff report submitted by Principal Planner Patenaude, dated April 8, 2003, was filed.

CED Director Ehrenthal noted that for the restaurant to secure the alcohol and beverage license at this location, the ABC requires a letter of public convenience or necessity from the City of Hayward since the downtown census tract is considered to be over-concentrated with alcohol establishments. She noted that by Council standards La Salsa Restaurant is exempt from the City's own alcoholic beverage regulations. It is considered a bona fide restaurant. She noted the differences between staff's position and that of COMMPRE.

Council Member Ward thanked staff for reaching out to COMMPRE on this issue. He commented that if Council supports this proposal, would the assumption be made that a legitimate restaurant only has to apply and will automatically be granted the authorization. He then concluded that the marketplace, itself, might preclude an over-saturation in the downtown area.

Planning Director Anderly responded that Council's standards do encourage restaurants but discourage bars and restaurants with bar services, so you could have a restaurant row in the area.

Council Member Hilson expressed concern regarding open containers in the public open area. This site is directly across from City Hall and across from BART. In other areas it might be more appropriate. He also commented on COMMPRE's letter.

Council Member Henson suggested some of the conditions proposed by COMMPRE would leave a negative impression with the patrons. He said this would be more of an enforcement issue.

Council Member Jimenez stated his support of the restaurant in revitalizing the downtown area.

**DRAFT**

Mayor Cooper asked if the Council could require that any alcohol served outside would be served in a glass. She said she posed the question to allay the concerns of patron's running amok.

City Attorney O'Toole stated that any conditions created would be made conditions for the license by the ABC. He noted that they could authorize the license without some of them. The Commission would be concerned if they had to actually monitor the license for serving containers.

City Manager Armas commented on the irony of discussing people buying containers at this restaurant with a meal when they have the option of purchasing liquor at the liquor store barely a block away. He suggested the City might request of the applicant their intentions toward take-away beer or wine.

Mayor Cooper opened the public hearing at 9:33 p.m.

Emily Chung, from COMMPRE, discussed the conditions they requested. She noted that License Type 41 on-site or off-site sale of beer and wine – the ability to sell for off-sale to protect the community and urged the City to condition the restaurant. She noted that placing this condition is common.

Council Member Dowling asked about the condition of no off-site sales. Ms. Chung explained that this is common in many areas. He then asked staff about COMMPRE's proposal that there be a fence erected between the eating area and the pedestrians. He was told that was not in the present plans.

Council Member Ward asked about Police Department conditions limiting the off-sale of alcoholic beverages in restaurants. Staff responded that there were none related to the out-door sale or consumption. He then asked about the history of public drunkenness in the downtown area as the result of restaurant sale of alcoholic beverages.

City Manager Armas responded that the downtown restaurants are very aware of maintaining an image not harmful to their business interests and as a result have taken steps to ensure no problems. He indicated that by-and-large the problems are less in the restaurants and more in the bars.

Council Member Henson asked about the corporate policy regarding no outside alcohol sales without an enclosure.

Bing Magpayo clarified that the La Salsa Restaurant would restrict their sales only to on-site consumption. He commented that, in the event of sale of the restaurant, the corporate headquarters would buy their lease. He noted that any sale of alcohol will be ended at 9 p.m. He emphasized that both the beer and wine would be sold in individual containers. He basically agreed with all of the suggestions of COMMPRE.

Council Member Dowling asked about the enclosure.



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Mr. Magpayo explained that the enclosure would be approximately 5-feet from the gutter. He said they plan to open in June and have a dry run on May 23<sup>rd</sup>.

City Manager Armas said the appropriate permits would have to be drawn through the City.

Jason Moreno commented on the standards of employees in businesses. He asked several questions regarding the restaurants business and their food sales versus alcohol sales. He also wondered about enforcement.

CED Director Ehrental and City Attorney O'Toole responded to his queries.

Carl Costa said he appreciates the City Council and staff and supported these efforts in the downtown area. He noted that this is a long time coming. He said he would support other restaurants in the area as well. He expressed concerns about public drunkenness already in the area.

Mayor Cooper closed the public hearing at 9:56 p.m.

Council Member Dowling asked that the six conditions requested by COMMPRE be included in the letter as well. With the following exceptions: Condition 2. will be 9 p.m., and Condition 5. that outdoor consumption be allowed on the condition of a fence or partitioning of the customers from the general public.

Council Member Henson said he appreciated the efforts of COMMPRE and the other neighborhood groups related to the concern with the proliferation of alcohol outlets in the downtown. He emphasized that it is important not to lump the responsible restaurants with some of the awful bars and liquor stores that exist in town, which seem to encourage public drunkenness. He said he believes that restaurants work better in clusters.

It was moved by Council Member Dowling, seconded by Council Member Ward, and unanimously carried to adopt the following:

Resolution 03-046, "Resolution Authorizing the Planning Director to Prepare a Letter of Convenience or Necessity for La Salsa Restaurant and Submit it to the State Department of Alcohol Beverage Control"

5. Water System Intertie Project: Approval of Mitigated Negative Declaration; Authorization for the City Manager to Execute Agreements and Appropriation of Funds

**DRAFT**

Staff report submitted by Deputy Director of Public Works Ameri, dated April 8, 2003, was filed.

Public Works Director Butler described the location of the project and the proposed improvements. He noted that recommendations included approving the mitigated negative declaration, the mitigation monitoring and reporting program, authorization to execute a joint exercise of powers agreement for the design and construction, operation and maintenance as well as to authorize professional design services. He described the process used by the selection panel, which will include representatives from the other agencies. He also provided a time frame for this project and noted that the other agencies already have approved this project.

Council commented favorably on this project. There was concern related to the scenario for the water delivery. Discussion ensued on the actual location, which will be located at a corner of a two-acre parcel on airport land. There will be a subsequent need to approve a land lease to San Francisco Water System.

Ongoing noise was discussed. Since the building is insulated, electric motors and noise from testing equipment that runs on diesel should create no more noise than other pump stations currently in residential areas.

Mayor Cooper opened the public hearing at 10:27 p.m.

Jason Moreno asked whose employees would be staffing the Project.

Public Works Director Butler said it would be City of Hayward employees.

Mayor Cooper closed the public hearing at 10:29 p.m.

It was moved by Council Member Henson, seconded by Council Member Rodriquez, and unanimously carried to adopt the following:

Resolution 03-047, "Resolution Approving the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Regional Water System Intertie Project, Project No. 7091"

Resolution 03-048, "Resolution Authorizing the City Manager to Execute a Joint Exercise of Powers Agreement with East Bay Municipal Utilities District (EBMUD) and San Francisco Public Utilities Commission (SFPUC) for Design and Construction Services for the SFPUC-COH-EBMUD Regional Water System Intertie Project, Project Nos. 7090, 7091"

Resolution 03-049, "Resolution Authorizing the City Manager to Execute a Joint Exercise of Powers Agreement with East Bay





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Municipal Utilities District (EBMUD) and San Francisco Public Utilities Commission (SFPUC) for Operations and Maintenance Services for the SFPUC-COH-EBMUD Regional Water System Intertie Project”

Resolution 03-050, “Resolution Authorizing the City Manager to Execute an Agreement Between the City of Hayward and Carollo Engineers for Professional Services to Prepare Plans, Specifications, and Construction Cost Estimates for the Regional Water System Intertie Project, Project Nos. 7090 and 7091”

Resolution 03-051, “Resolution Amending Resolution 02-087, as Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2002-03, Relating to an Appropriation of Funds for the Intertie Project, Project No. 7090, 7091 & 7166”

**6. Adoption of Residential Rental Inspection Ordinance**

Staff report submitted by City Clerk Reyes, dated April 8, 2003, was filed.

City Clerk Reyes noted that this adoption was under Legislative Business because the vote at introduction was not unanimous.

Mayor Cooper opened the public hearing at 10:30 p.m.

Francisco Abrantes described two personal residences located at 22915 and 22917 Watkins, which were notified that they would be inspected under the residential rental inspection ordinance. Both residences are occupied by owners.

City Manager Armas indicated that this was a mistake.

Mayor Cooper closed the public hearing at 10:32 p.m.

It was moved by Council Member Ward, seconded by Council Member Hilson, and carried by the following roll call vote to:

Adopt Ordinance 03-05, “Ordinance Repealing Article 5 of Chapter 9 of the Hayward Municipal Code and Enacting a New Ordinance for the Residential Rental Inspection Program”

**DRAFT**

AYES: Council Members Hilson, Rodriquez, Ward,  
Dowling, Henson  
MAYOR Cooper  
NOES: None  
ABSENT: None  
ABSTAINED: Council Member Jimenez

## **COUNCIL REPORTS**

There were no Council Reports.

## **ADJOURNMENT**

Mayor Cooper adjourned the meeting at 10:33 p.m.

APPROVED:

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Roberta Cooper, Mayor, City of Hayward

ATTEST:

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Angelina Reyes, City Clerk, City of Hayward